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BOARD OF BARBERING AND COSMETOLOGY
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**CALIFORNIA STATE BOARD OF
 BARBERING AND COSMETOLOGY
 ENFORCEMENT COMMITTEE MEETING
 MINUTES OF JULY 16, 2012**

**2420 Del Paso Road
 Sequoia Room, 1st Floor
 Sacramento, CA 95834**

COMMITTEE MEMBERS PRESENT

Richard Hedges
 Katie Dawson
 Deedee Crossett (via phone)
 Frank Lloyd

STAFF MEMBERS PRESENT

Kristy Underwood, Executive Director
 Joseph Brown, Inspector Supervisor
 James Jacobs, Inspector Supervisor
 Xochitl Camargo, Inspector Supervisor (via phone)
 Tami Guess, Board Analyst
 Sandra Torres, Enforcement Analyst

1. Agenda Item #1, WELCOME AND INTRODUCTIONS

Mr. Hedges called the meeting to order at 9:00 a.m.

2. Agenda Item #2, APPROVAL OF ENFORCEMENT COMMITTEE MEETING MINUTES

Mr. Hedges clarified his statements noted on page 3 of the minutes. He clarified he was frustrated with the bureaucracy they had to go through to help the apprentices between DAS and the Board's authority due to the vague level of responsibility. Upon a motion by Ms. Dawson, seconded by Mr. Lloyd, the minutes were approved by a 4-0 vote.

3. Agenda Item, #3, APPRENTICE PROGRAM REVIEW UPDATE

Sandra Torres provided a brief overview of staff's efforts and future plans. She noted in the past there were inspections but no one person to follow up on the issues to their resolution with other agencies. This is now her job and she feels it will be very beneficial. Ms. Torres stated she has learned many agencies are involved in the apprenticeship process including the Local Education Agency (LEA), the Board and the Division of Apprenticeship Standards (DAS). She noted initially the communication was minimal and she has tried to keep every agency apprised. She believed everyone is now on the same page and working together better. She provided a diagram of the layout of the apprenticeship program. The agencies all work with the program sponsor but the communication between the agencies was limited.

Staff has prepared folders and files of program sponsors to centralize their information. She is keeping abreast of issues, complaints and correspondence, and keeping the files updated. Once the files are complete, the pass-fail rates can be determined. Inspectors have continued to visit establishments with apprentices. Ms. Torres is ensuring all the apprentice information is correct. Cases are being opened on violations such as unlicensed activity, expired licenses and extreme discrepancies of On the Job Training (OJT) hours. Most program sponsors have been responsive. DAS and LEA have also been included.

Two program sponsors were approved -- City Barbering Cosmetology Apprenticeship Committee (Northern California) and Nor Cal Cosmetology Barbering Apprenticeship Program (Alameda and Contra Costa Counties). Ms. Torres stated it was DAS' responsibility to authorize the counties a sponsor can work in. Ms. Underwood was unsure if DAS could look at pass-fail rates. Two more sponsors (Sacramento and La Mesa) were awaiting approval but this will not occur until 2013.

Mr. Lloyd asked if the owner could be cited if they are not on the premises. Typically, they have to be onsite to be cited. The trainer is typically cited for incomplete recordkeeping but the owner is ultimately responsible. Inspector Supervisor, Mr. Jacobs expressed concern that if the trainer is employing the apprentice the trainer should also be cited, even if they are not present. It appears they are finding booth renters (independent contractors) who employ apprentices. This could be a problem as the booth renter probably does not carry workers compensation, which is required. It is a common occurrence, if a trainer changes establishments and takes the apprentice with them. This Board does not recognize independent contractors or booth renters and the owner would be ultimately responsible. In essence, the apprentice belongs to the salon and not the trainer. Ms. Underwood recommended staff follow-up with DAS about apprentice employee status. Mr. Jacobs stated the inspectors did not look at employee status.

Ms. Crossett asked how an apprentice can know their rights. Ms. Torres stated this would be through the program sponsor, who will provide them with a list of responsibilities for each party. The owner and trainer will also sign this. The weekly training the apprentice receives will also emphasize this.

Mr. Hedges asked who is responsible for maintaining the trainer/apprentice ratio. Ms. Torres noted the program sponsor will complete their paperwork for approval through DAS. This did not always include a required ratio. Ms. Torres has recommended adding to Section 918b, allowing two apprentices per trainer at any time.

Ms. Torres has also found apprentices who enroll multiple times. She has recommended adding Section 914.1, "an apprentice may not re-enter the program after two times of being an apprentice without good cause." The hours are good for three years. A person should be able to complete the program within two years. The section would require a person to take the exam within two years but a two year extension may be granted due to "a good cause." She acknowledged some apprentices have taken on second jobs and are not able to work the required weekly hours.

Ms. Torres noted staff receives applications for apprenticeships after completing school but failing the test. This should not be allowed.

Ms. Underwood noted the regulations would take at least one year to take effect. This will give the program sponsors time to change.

Public Comment

Fred Jones of Professional Beauty Federation of California (PBFC) stated he agreed with all the recommendations in principle. He clarified Section 914.1 should include the ability to change categories.

Mr. Jones noted some concerns have arose about an apprentice's ability to work at multiple locations of one employer. This has been approved by DAS. He recommended the proposed regulation to limit the ratio be further clarified to "at any given moment a trainer should only be supervising two apprentices." Ms. Underwood agreed the proposed section should be reworded. Mr. Jacobs noted every trainer has to be listed on an apprentice's form. Ms. Crossett wondered how accurate records could be kept if an apprentice goes to multiple salons. Ms. Underwood stated the trainer is responsible for keeping the records but it may be partial. The trainer will be cited for lack of records. Ms. Torres stated the apprentices do take their own records in a binder but this is not in regulation.

Mr. Jones believed it was important the Board not try to duplicate regulations with other agencies. This could lead to conflict. Regarding employment status, he believed it is important the Board ensures DAS is doing their job regarding apprentices, rather than the Board trying to do the job of DAS. He agreed having one person in charge of this communication is a good solution.

Ms. Crossett expressed her concerns about the Board having a good understanding of the process. Mr. Hedges believed progress has been made. Mr. Jones noted ultimately the establishment owner will be held liable for all violations in the salon. Mr. Jacobs disagreed and stated the owner does not get certain violations (i.e., 7400).

The Committee commended Ms. Torres for her thorough research and work.

4. Agenda Item #4, DISCUSSION AND RECOMMENDATIONS TO UPDATE THE HEALTH AND SAFETY REGULATIONS (ARTICLE 12 OF TITLE 16, DIVISION 9 OF THE CALIFORNIA CODE OF REGULATIONS) RELATED TO ALL LICENSES

Ms. Underwood presented recommended preliminary regulation changes.

979(a): "Before use upon a patron, all non electrical instruments that can be disinfected shall be disinfected." Ms. Dawson believed this is vague. It is noted elsewhere that non electrical instruments that cannot be disinfected are to be thrown away. The change was agreed upon by the committee.

979(b)(2): "...change the disinfectant in accordance with manufacturer's instructions or whenever visibly dirty." Ms. Dawson believed "dirty" should be defined more clearly and preferred the word contaminated. Mr. Jacobs also preferred contaminated. Ms. Crossett believed contaminated was more accurate but dirty may be more understandable. The Committee agreed to use contaminated. Mr. Jacobs disagreed with the use of "manufacturer's instructions" as they may be inefficient. Mr. Hedges recommended adding disinfecting for "10 minutes or more," but the Committee believed the manufacturer's instructions should be followed as better products may evolve and the regulation would need to be changed.

Public Comment

Carrie Harris, Enforcement Analyst of the Board of Barbering and Cosmetology, noted the footspa regulations stated that a registered EPA disinfectant must be used due to the manufacturer's instructions, and cleaned for at least 10 minutes. However, Ms. Crossett noted things can change and it would be difficult to include a time constraint for future regulations.

979(c): Currently states "...in a properly labeled receptacle." Recommended: "...placed in a container labeled soiled or dirty." Mr. Jacobs recommended using contaminated instead of dirty.

Ms. Crossett noted contaminated may not be as understandable and an average hairdresser uses clean and dirty.

The Committee agreed “dirty” could also be used by licensees and they would not be cited. Mr. Lloyd recommended “...container labeled dirty, soiled or contaminated.”

979(d): It was proposed to use “cleaned and disinfected.” Mr. Jacobs disagreed and it was agreed to use only disinfected.

979(d)(1): “Disinfected shears may not be stored for use in any non disinfectable pouch.” Mr. Jacobs inquired what is considered a non disinfectable pouch? How are these pouches to be disinfected? Ms. Dawson preferred “non disinfectable location.” Mr. Hedges noted licensees are using pouches that cannot be disinfected and are being fined. Ms. Crossett recommended using “container” other than “pouch.” Containers such as drawers can be sprayed, wiped down and disinfected. Ms. Dawson noted plastic trays can be used and disinfected. Mr. Hedges recommended specifically stating leather or fabric pouch. Ms. Crossett disagreed with being too specific and recommended using “clean, closed container” other than “pouch.” However, staff noted the Department has lost decisions due to regulations not being specific enough. Mr. Hedges noted this is a common citation in the Disciplinary Review Committee (DRC). Ms. Crossett recommended providing examples of a non disinfectable container on the website. Ms. Underwood read a recent decision found against the Department. In essence, it was found the pouch was “visibly clean on the day of inspection and there was no regulation which would notify licensees that the use of a visibly clean leather is prohibited.” Mr. Hedges took a consensus of the Committee’s views on this proposed change. Mr. Hedges and Mr. Lloyd agreed, Ms. Dawson and Ms. Crossett disagreed. It was agreed to take the matter to the full Board. Mr. Jacobs recommended using “non disinfectable container.”

980(b): It is recommended to add flat irons to this section, and that they be “stored in a covered place that is labeled disinfected.” It was agreed to remove the word ‘clean’. Ms. Crossett recommended using “hot styling tools.”

980(c): This is an addition, “all soiled electrical instruments that have been used on a patron, or soiled in any manner, shall be placed in a receptacle labeled soiled or dirty, excluding hot styling tools.” It does not require a lid and can be placed in a drawer.

Mr. Jacobs recommended clarifying where a dirty instrument can be stored after spraying and air drying or waiting to be cleaned. He noted citations are not given when air drying clippers as it is part of the disinfection. As long as they are clean before using on the next patron (979a). However, citations will be issued if a cleaned clipper is not placed in a closed container.

980.1: “Footspas that are out of order be noted as out of order.” The cleaning log must reflect when the footspa become unoperable. This was agreed to by the Committee.

980.1 (e)(1 & 2); 980.2 (d)(1 & 2): Change to “at least” 6 hours. This was agreed to by the Committee.

981(a): Propose to add “buffers, pumice stones and wax sticks” as examples and to say, this includes but is not limited to:.

983(b): Currently states “...equally effective cleansing agent.” Proposed change: “...equally effective alcohol-based cleansing agent.” This information was received from the CDC and the FDA. Ms. Dawson stated the CDC states soap and water is preferred but alcohol cleansing agents may also be used. New proposed change: “...shall thoroughly wash his or her hands with soap and water or an effective alcohol-based cleansing agent.” It was noted the regulations require soap and

water be available. Ms. Crossett did not agree washing with a cleansing agent should be an option, however the Board agreed on this at the previous meeting when staff presented research that the alcohol-based cleansing agents were effective. Ms. Dawson noted people may want alternatives to the preferred method and there is no need to be restrictive to soap and water.

Carrie Harris recommended adding “before and after each patron.” Mr. Hedges believed this is a personal decision and the Committee agreed the changes were adequate.

The Committee agreed to the final proposal.

(At this time the Committee took a short break.)

987(b): Regarding laundering towels, proposed change from “at least 140 degrees” to “hot water.” Mr. Jacobs noted some detergents are designed to work in cold water. The textbook notes to “launder according to directions on the item’s label.” It was unsure if the temperature of the water would matter. The item will go to the Department of Health Services for review if approved by the full board. Staff agreed to contact Health Services prior to bringing the issue to the full Board.

987(c): “All clean towels shall be stored in a clean closed cabinet or closed container.” The Committee agreed to this change. Ms. Crossett asked about towels sitting out for patrons. Mr. Jacobs stated this would be a violation. Once folded, laundry needs to be in a closed container/cabinet.

988(a): Proposal to add “waxes” and “cosmetic preparations” to be more specific. Mr. Jacobs and Mr. Brown agreed. Ms. Crossett believed the term “cosmetic preparations” was limiting and should not be used. She noted preparations was not a word commonly used in the industry. Ms. Dawson recommended it to say “...liquids, creams, waxes, cosmetics and other preparations shall be kept in clean and closed containers.” Mr. Lloyd and Mr. Hedges agreed with Ms. Dawson. Mr. Hedges questioned using the term powders but staff noted it should not be specific and includes all powders and can be kept in clean shakers (assumed to be covered).

989: Proposal to remove the word “banned” “No establishment or schools shall have on the premises cosmetic products containing hazardous substances which have been restricted by the U.S. Food and Drug Administration...” The Committee agreed to this change.

Public Comment:

Fred Jones asked if certain restricted products can be used. Staff noted MMA should not be used but currently it is not cited because it is listed as restricted by the FDA and not banned. Mr. Jones noted a product may be restricted but appropriate under certain uses. A chemical may be restricted but allowable when diluted. Ms. Guess disagreed and stated that any chemicals restricted by the FDA should not be used in salons. Studies have shown that MMA is very hazardous but is being used in salons. Mr. Jones discussed the difference between a product being restricted or banned. Restricted items need to be used per instructions. Mr. Hedges stated problems may develop if a restricted product is not used correctly. Ms. Dawson did not believe the Board was set up to determine efficacy.

Staff agreed this section needs to be reviewed further.

990(c): Current wording: “Treatment tables must be covered with a clean towel or a clean sheet of examination paper after each patron.” Inspectors have found the tables were sometimes used for resting and the sheets weren’t changed prior to the next patron. Mr. Hedges recommended “...after each use.” The Committee agreed to this change. Staff also initially recommended adding “After a

towel and/or sheet has once been used, it shall immediately be removed from the treatment table and be deposited in a closed container and not used until properly laundered or sanitized.” However, with the change to “after each use,” this addition will not be needed. Mr. Jacobs requested the definition of a treatment table and wondered if it includes a manicurist’s table. The Committee agrees this would include a manicurist table and should be defined.

990(d): Ms. Underwood noted this should be merged into Section 990(c) and the wording changed to “treatment areas” and defined as any area that the customers’ skin comes into contact with and provide examples. The Committee agreed to the proposed change.

991(a)(1): Currently reads: “No licensee may perform any act which affects the structure or function of living tissue of the face or body.” Proposed addition: “No licensee may perform a medical treatment as defined; the care and management of a patient to combat, ameliorate, or prevent a disease, disorder or injury.” Mr. Hedges questioned the use of the word treatment as it gives the impression of a medical procedure. The Committee agreed this addition clarifies the scope of practice.

Public Comment:

Fred Jones was aware some cosmetologists will work with doctors in managing some issues including hair loss. He recommended making the addition specific to healthcare. He recommended “...as defined as the health care of a patient to combat...” He believed it was appropriate for a cosmetologist to work with a doctor to manage care, but the Committee and staff disagreed. Staff agreed to discuss this proposed change with the Medical Board.

991(b)(4): Agreed to proposal to add “abrasion and/or exfoliation of the skin.”

992(c): Currently reads: “Only commercially available products for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as required by manufacturer’s instructions.” The Committee agreed with the staff’s changes, as proposed by the skin care advisory expert group. These changes include:

- 992(c) Only commercially-available products that are not considered medical grade or sold for physician’s use only, which are not over 30% acid content or with a start up pH of 3.0 or higher may be used for the purpose of skin exfoliation.
- 992(d) Use of creams, lotions, serums or tonics over a 30% acid content or a pH under 3.0 shall be considered the practice of medicine.
- 992(e) Mixing or combining skin exfoliation products is prohibited except as required by manufacturers instructions.
- 992(f) All skin peeling agents must be applied using manufacturer’s guidelines for health and safety.
- 992(g) Application protocols shall be made available upon request by a board representative.
- 992(h) Client Health/History Cards shall be completed by every patron receiving a skin exfoliating service. Client cards shall be made available upon request by a board representative.

Public Comment:

Fred Jones asked about 992(h), client health history cards. These were recommended by the skin care advisory group and is taught in school. It would protect the licensee and the consumer if everything is in writing. Professional liability insurance typically requires the card.

5. Agenda Item #5, DISCUSSION OF NATURAL HAIR BRAIDING AND HOW TO ENFORCE SECTION 7316(d)(2)

Ms. Underwood provided additional background on this issue. A previous lawsuit exempted braiders from licensure. Inspectors are finding braiders saying they are only braiding and do not need a license. However, when they do other tasks (such as washing hair), they do need a license and will be cited. Mr. Jacobs agreed this is a big problem. Ms. Underwood believed the sunset period would be a good time to introduce certification and/or license requirements. She noted it is a controversial issue. Mr. Hedges noted the scope of hairbraiding has enlarged but is not regulated. Ms. Dawson noted many problems can arise when hairbraiding is not done correctly such as hair loss and scalp diseases. She believed this needs to be addressed for consumer safety.

Ms. Underwood stated 15 states require a license for braiders. A curriculum may need to be developed as it is not taught in every school. Mr. Hedges recommended a test be developed and not require proof of schooling. Ms. Underwood stated there is a national exam for braiding certification. Ms. Crossett believed braiding should be part of a cosmetology license. The consumer may not know a braider is not licensed.

Mr. Hedges recommended a meeting of the experts in the industry including Jerry Tyler and Ken Williams. Ms. Underwood was unsure if there was time to meet as a group. She recommended adding it to the sunset report as a new issue and recommendation. This issue will be taken to the full Board for further discussion.

Public Comment:

Fred Jones noted braiding is occurring in salons and perceived to be under the Board's authority. Traction alopecia is caused by tight braids being done incorrectly. He recommended removing the phrase "mechanical devices" from our regulation.

Mae Handy from Sacramento City College noted she was an expert witness in 1998 regarding hairbraiding. She agreed the industry has gone through a lot of changes since that time. She recommended curriculum be developed to assist people in learning to do braiding correctly. She has been teaching braiding in schools for 30 years.

6. Agenda Item #6, DISCUSSION ON LICENSEE IN CHARGE (SECTION 7348) PERTAINING TO ESTABLISHMENT OWNERS WHO DO NOT HOLD A PERSONAL LICENSE

This is an ongoing issue whether an establishment owner who does not hold a personal license can be in charge. Ms. Underwood conferred with Gary Duke, legal counsel, and they agreed the intent was that the establishment be in the charge of a person who holds a personal license. Mr. Hedges requested Mr. Duke provide his opinion in writing to the Board. He believed having someone with a personal license be in charge, would be a benefit to salon owners to avoid fines and allow them to become more aware of what was occurring in their salons. He noted this is a repeatable violation. Mr. Lloyd believed that salon owners should also receive training. He felt salon owners should be able to be in charge of their establishments. He recommended the board provide some sort of

training to educate establishment owners of their responsibilities. Ms. Dawson asked if the Board requires continuing education. Ms. Underwood stated there is currently no continuing education requirement. Ms. Underwood stated there are no requirements for establishment owners currently, and multiple applications are received yearly. Mr. Brown stated everyone in a salon should be licensed. It was noted that in past years it was the stand of the Board to have someone who possesses a personal license be in charge of the establishment. Staff agreed to research what is done in other states.

7. Agenda Item #7, PUBLIC COMMENT

The public present did not wish to address the Committee.

8. Agenda Item #8, ADJOURNMENT

With no further business, the meeting was adjourned.